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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

421807

MOTOROLA, INCORPORATED, a Delaware corporation,)	NO.	
Plaintiff,)	COMPLAINT FOR BREACH OF CONTRACT, GOODS AND SER- VICES SOLD AND DELIVERED, OPEN BOOK ACCOUNT, ACCOUNT STATED, AND ALTER EGO	
vs.)		
GREMLIN INDUSTRIES, INCORPORATED, a Delaware corporation; GREMLIN ASSOCIATES, a California Limited Partnership; and DOES I through V, inclusive,)		
Defendants.)		

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19 COMES NOW plaintiff MOTOROLA, INCORPORATED ("MOTOROLA"),
20 and for causes of action against defendants, and each of them,
21 alleges as follows:

FIRST CAUSE OF ACTION

23 1. Plaintiff MOTOROLA was at all times mentioned herein
24 and is now a corporation organized and existing under and by
25 virtue of the laws of the State of Delaware.

26 2. Defendant GREMLIN INDUSTRIES, INCORPORATED ("GREMLIN")
27 was at all times mentioned herein and is now a corporation
organized and existing under and by virtue of the laws of the

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3 State of Delaware and licensed to do business and doing business
4 in the State of California, County of San Diego.

5 3. The true names and capacities of defendants DOES I
6 through V are unknown to plaintiff, and plaintiff asks that when
7 their names and capacities are ascertained that this complaint
8 and the proceedings herein may be amended accordingly, and
9 defendants are named in suit pursuant to §474 of the California
10 Code of Civil Procedure.

11 4. Plaintiff is informed and believes and thereon
12 alleges that at all times herein referred to, defendants GREMLIN
13 and DOES I through V, and each of them, were the agents of each
14 other and were in all transactions by each of them with plaintiff
15 acting within the scope and authority of that agency.

16 5. Plaintiff requests leave to amend the complaint
17 herein to increase the damage alleged to conform to the facts as
18 they exist at the time of the requested amendment.

19 6. Within two years last past defendants and each of
20 them orally agreed to purchase television monitors, and to pay for
21 such when delivered by MOTOROLA to defendants and each of them.

22 7. The contract as entered into between MOTOROLA and
23 defendants, and each of them, was to be performed in the City of
24 San Diego, County of San Diego, State of California, and was in
25 fact fully performed by MOTOROLA therein.

26 8. MOTOROLA has performed each and all of the terms,
27 conditions, covenants, and promises of the contract on its part
28 to be performed.

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3 9. Defendants, and each of them, breached the contract
4 with MOTOROLA by failing to pay the total amount due under said
5 contract, to wit, there is still due and owing the sum of
6 \$55,492.64.

7 10. MOTOROLA has made demand on defendants, and each of
8 them, for the payment of the balance due under the contract, but
9 defendants and each of them have failed and refused, and still
10 fail and refuse to pay said balance, and the whole thereof remains
11 due, owing, and unpaid.

12 11. As a direct and proximate result of said breach of
13 contract, MOTOROLA has suffered damages in the amount of
14 \$55,492.64 plus interest thereon from May 13, 1978.

15 SECOND CAUSE OF ACTION

16 1. Plaintiff refers to, realleges, and incorporates by
17 reference as though fully set forth herein, the allegations, and
18 each of them, contained in Paragraphs 1 through 6 of its First
19 Cause of Action.

20 2. Within two years prior to the commencement of this
21 action, MOTOROLA furnished to defendants and each of them
22 certain television monitors at the special instance and request
23 of defendants and each of them; said defendants and each of them
24 agreed and promised to pay the reasonable value thereof; the
25 reasonable value thereof is \$55,492.64.

26 3. Although demand for payment has been made upon
27 defendants and each of them, no part of the sum due has been
28 paid.

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3 4. There is now due, owing, and unpaid from defendants
4 and each of them to MOTOROLA the sum of \$55,492.64, together
5 with interest on the various portions of said sum at the legal
6 rate from the dates said portions became due and owing.

7 THIRD CAUSE OF ACTION

8 1. Plaintiff refers to, realleges, and incorporates
9 by reference as though fully set forth herein, the allegations,
10 and each of them, contained in Paragraphs 1 through 6 of its
11 First Cause of Action.

12 2. Within four years prior to the commencement of this
13 action, defendants and each of them became indebted to MOTOROLA
14 on an open book account for money due in the sum of \$55,492.64
15 for labor and materials furnished by MOTOROLA at the special
16 instance and request of defendants and each of them.

17 3. Although demand for payment has been made upon
18 defendants and each of them, no part of the sum due has been paid.

19 4. There is now due, owing, and unpaid from defendants
20 and each of them to MOTOROLA the sum of \$55,492.64, together with
21 interest thereon at the legal rate from May 13, 1978.

22 FOURTH CAUSE OF ACTION

23 1. Plaintiff refers to, realleges, and incorporates
24 by reference as though fully set forth herein, the allegations,
25 and each of them, contained in Paragraphs 1 through 6 of its
26 First Cause of Action.

27 2. Within four years prior to the commencement of this
28 action, an account was stated in writing by and between MOTOROLA

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3 and defendants and each of them; on the basis of said account,
4 there was found and agreed to be due from defendants and each
5 of them to MOTOROLA the sum of \$55,492.64, which account was
6 stated in the City of San Diego, County of San Diego, State
7 of California.

8 3. Although demand for payment has been made upon
9 defendants and each of them, no part of the sum due has been
10 paid, nor has any interest thereon been paid.

11 4. There is now due, owing, and unpaid from defendants
12 and each of them to MOTOROLA the sum of \$55,492.64, together
13 with interest thereon at the legal rate from the date of the
14 first entry of the unpaid balance of said account until paid.

15 FIFTH CAUSE OF ACTION

16 1. Plaintiff refers to, realleges, and incorporates by
17 reference as though fully set forth herein, the allegations, and
18 each of them, contained in Paragraphs 1 through 11 of its First
19 Cause of Action; Paragraph 2 of its Second Cause of Action;
20 Paragraph 2 of its Third Cause of Action; and Paragraphs 2, 3
21 and 4 of its Fourth Cause of Action.

22 2. Plaintiff is informed and believes and thereon
23 alleges that GREMLIN ASSOCIATES, a California Limited Partnership,
24 owns, holds, or controls substantial portions of the outstanding
25 stock in the aforementioned defendant corporation.

26 3. Plaintiff is informed and believes and thereon
27 alleges that at all times relevant GREMLIN ASSOCIATES has exer-
28 cised and continues to exercise such dominion and control over

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3 the business and affairs of corporate defendant GREMLIN as to
4 constitute said corporate defendant as the alter ego of GREMLIN
5 ASSOCIATES.

6 4. Plaintiff is informed and believes and thereon
7 alleges that there exists such a unity of ownership and control
8 between GREMLIN ASSOCIATES and corporate defendant GREMLIN and that
9 such corporate defendant was and is a mere conduit for the gain
10 and profit of GREMLIN ASSOCIATES, that adherence to the fiction
11 that said corporation is a separate and distinct entity would
12 sanction fraud and promote injustice.

WHEREFORE, plaintiff prays judgment against defendants,
and each of them, as follows:

15 1. On Causes of Action FIRST through FIFTH the sum of
16 \$55,492.64, together with interest thereon at the legal rate from
17 the dates alleged:

18 2. Alternatively and concurrently, that plaintiff have
19 judgment in the amount prayed for herein directly against defen-
20 dant GREMLIN ASSOCIATES as the alter ego of defendant GREMLIN;

21 3. For the costs of suit herein; and

22 4. For such other relief as to the Court seems appro-
23 priate and proper.

24 DATED: August 22, 1978.

GRAY, CARY, AMES, & FRYE

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Dirk T. Metzger
Attorneys for P

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VERIFICATION

4 DIRK T. METZGER, the undersigned, declares as follows:

5 That he is one of the attorneys for MOTOROLA.

6 INCORPORATED, a corporation, and makes this verification on
7 behalf of said corporation by reason of the fact that there are
8 no officers of said corporation in the County of San Diego,
9 State of California, where declarant has his offices.

10 That he has read the foregoing Complaint for Breach of
11 Contract, Goods and Services Sold and Delivered, Open Book
12 Account, Account Stated, and Alter Ego and that he is informed
13 and believes the matters therein to be true and on that ground
14 alleges that the matters stated therein are true.

15 Executed on August 22, 1978 at San Diego, California.

I declare under penalty of perjury that the foregoing
is true and correct.

Dirk T. Metzger

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